

Message Text

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INFO AMCONSUL BOMBAY
AMCONSUL CALCUTTA
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LIMITED OFFICIAL USE SECTION 1 OF 2 NEW DELHI 13960

FOR NEA/INS

E.O. 11652: N/A
TAGS: SHUM, IN
SUBJECT: 1978 INDIA COUNTRY REPORT ON HUMAN RIGHTS

REEF: A. STATE 229825 B. DELHI 13615 C. STATE 218630

1. THERE FOLLOWS EMBASSY COMMENT ON AND ADDITIONAL INFORMATION
FOR DRAFT SUBJECT REPORT. RESPONSES ARE KEYED TO DRAFT TEXT OF
PARA THREE REFTEL (A).

2. I.A. TORTURE: FIRST SENTENCE SHOULD READ:
"TORTURE IS PROHIBITED BY THE INDIAN PENAL CODE".
LAST SENTENCE SHOULD READ: "IN TWO REPORTED CASES
OF DEATHS WHICH FOLLOWED POLICE INTERROGATIONS THIS PAST YEAR IN
THE STATES OF TAMIL NADU AND ANDHRA PRADESH, THE STATE
GOVERNMENTS RESPONDED BY INSTITUTING JUDICIAL OR MAGISTERIAL
COMMISSIONS OF INQUIRY; IN THE TAMIL NADU CASE, POLICE OFFICIALS
WERE ALSO EITHER SUSPENDED OR TRANSFERRED. IN THE ANDHRA PRADESH
CASE, THE COMMISSION RECOMMENDED THAT POLICE OFFICERS BE TRIED
FOR CAUSING THE DEATH OF THE DETAINEE AND FOR THE RAPE OF HIS WIFE.
THE STATE GOVT ACCEPTED THE COMMISSION'S FINDINGS TO INSTITUTE
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CRIMINAL PROCEEDINGS AND SAID IT WOULD TAKE ADMINISTRATIVE
ACTION AGAINST OTHER OFFICIALS INVOLVED.

B. CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT:
SECOND SENTENCE OF FIRST PARAGRAPH SHOULD READ: IN ADDITION TO
THE TWO REPORTED DEATHS FOLLOWING POLICE INTERROGATIONS, THERE
HAVE BEEN OCCASIONAL PRESS REPORTS OF HARSH POLICE TREATMENT TOWARD

THOSE INVOLVED IN OR DETAINED FOLLOWING DEMONSTRATIONS AND CIVIL DISTURBANCES. JUDICIAL INQUIRIES HAVE BEEN INSTITUTED IN SOME CASES.

SECOND PARAGRAPH: WE DO NOT BELIEVE CONDEMNATION OF THE CASTE SYSTEM SHOULD BE INCLUDED IN THIS SECTION. WE HAVE UNDERSTOOD, FROM THE SPEECHES OF THE SECRETARY AND DEPUTY SECRETARY AND OTHERS, THAT THE CONCERN IN THIS SECTION IS WITH "THE RIGHT TO BE FREE FROM GOVERNMENTAL VIOLATION OF THE INTEGRITY OF THE PERSON". WE CONSIDER DISCUSSION OF THE CASTE SYSTEM MORE APPROPRIATELY BELONGS IN SECTION THREE, AS REVISED BELOW. THIS IS THE FORMAT USED FOR DISCUSSIONS OF SOCIAL DISCRIMINATION IN LAST YEAR'S REPORTS ON OTHER COUNTRIES.

C. ARBITRARY ARREST OR IMPRISONMENT: PARAGRAPH TWO, THIRD SENTENCE BEGINNING "HOWEVER", SHOULD READ: "...HOWEVER, AND ONE SUCH LAW REMAINS ON THE BOOKS--THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT. THE NUMBER OF PERSONS BEING HELD WITHOUT TRIAL UNDER THIS ACT AS OF JUNE 30, 1978 WAS 168. (FYI: THE DEFENSE OF INDIA ACT CEASED TO BE IN EFFECT SEPTEMBER 26, 1977, SIX MONTHS AFTER THE REVOCATION OF THE STATE OF EXTERNAL EMERGENCY.)

PARAGRAPH THREE: SENTENCE SHOULD READ: "IN ADDITION FIVE STATES ALSO HAVE PREVENTIVE DETENTION LAWS". (FYI: THESE STATES ARE AP, MP, UP, RAJASTHAN AND JAMMU AND KASHMIR. WE ARE UNABLE TO LIMITED OFFICIAL USE

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PROVIDE ANY ESTIMATED NUMBERS OF DETENTIONS IN THESE STATES.)

D. DENIAL OF FAIR PUBLIC TRIAL. LAST SENTENCE SHOULD READ: "THE OFFICIAL SECRETS ACT ALSO PERMITS PROCEEDINGS TO BE CLOSED ON THE PLEA THAT PUBLICATION OF ANY EVIDENCE OR STATEMENTS WOULD BE PREJUDICIAL TO THE SAFETY OF THE STATE, BUT ALSO REQUIRES THAT THE PASSING OF SENTENCE TAKE PLACE IN PUBLIC".

E. INVASION OF THE HOME: DELETE LAST SENTENCE; AS WE NOTED IN REFTTEL B, THERE HAVE UNDOUBTEDLY BEEN INSTANCES IN WHICH THE POLICE HAVE NOT HELD TO THE LETTER OF THE LAW BUT WE CANNOT DOCUMENT CASES SINCE ILLEGAL SEARCHES ARE NOT LIKELY TO ATTRACT ATTENTION HERE UNLESS THEY HAVE POLITICAL OVERTONES.

3. II. GOVERNMENTAL POLICIES RELATING TO THE FULFILLMENT OF SUCH VITAL NEEDS AS FOOD, SHELTER, HEALTH CARE AND EDUCATION:

FIRST PARAGRAPH, SECOND SENTENCE, CHANGE BEGINNING TO READ: "IN ITS MOST RECENT BUDGET, ..." THIRD SENTENCE, CHANGE BEGINNING TO READ: "THE GOVERNMENT'S OUTLAYS FOR AGRICULTURE AND ALLIED SECTORS IN 1978-79

..." FOURTH SENTENCE, CHANGE TO READ: "THE RESERVE BANK OF INDIA

HAS ISSUED INSTRUCTIONS REQUIRING COMMERCIAL BANKS TO INCREASE THEIR LOANS TO THE RURAL SECTOR; A MINIMUM OF ONE-THIRD OF ALL COMMERCIAL BANK LENDING MUST BE MADE TO PRIORITY SECTORS, PARTICULARLY AGRICULTURE, BY MARCH 1977".

SECOND PARAGRAPH, SECOND SENTENCE, CHANGE TO READ: "GOVERNMENT PROGRAMS TO PROVIDE SPECIAL ASSISTANCE TO THE ECONOMICALLY BACKWARD CLASSES CONTINUE. THESE INCLUDE THE RESERVATION OF EDUCATIONAL ADMISSIONS AND PUBLIC SECTOR JOBS, AS WELL AS LAND REDISTRIBUTION, FOR SCHEDULED (I.E; HARIJAN) CASTES AND SCHEDULED TRIBES".
(FYI: THE TERM "SCHEDULED" IS NOT "SO-CALLED" IN THE SENSE OF BEING A POPULAR EUPHEMISM; IT IS THE CONSTITUTIONAL TERMS USED TO DESIGNATE THESE GROUPS AND MOST INDIAN LEGISLATION IS BASED ON THAT TERMINOLOGY.)
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4. III A. FREEDOM OF THOUGHT, SPEECH, RELIGION AND ASSEMBLY:

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FOR NEA/INS

REF: A. STATE 229825 B. DELHI 13615 C. STATE 218630

REVISE TO READ: "THE CONSTITUTION OF INDIA GUARANTEES FREEDOM OF THOUGHT, SPEECH AND BY EXTENSION THE PRESS, RELIGION AND

ASSEMBLY IN INDIA. THERE ARE NO SIGNIFICANT RESTRICTIONS ON THE ACTIVITIES OF TRADE UNIONS.

"THE CONSTITUTION OF INDIA PROHIBITS DISCRIMINATION BY THE STATE AGAINST ANY CITIZENS ON THE GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH. NO CITIZEN CAN BE SUBJECT ON SUCH GROUNDS TO ANY DISABILITY OR RESTRICTION WITH REGARD TO PUBLIC SHOPS AND ACCOMMODATIONS; PUBLIC WELLS AND WATER PLACES; AND PUBLIC EMPLOYMENT. THE CONSTITUTION ALSO ABOLISHES "UNTOUCHABILITY" AND FORBIDS ITS PRACTICE IN ANY FORM. IMPLEMENTING LEGISLATION WAS ENACTED IN 1966 AND FURTHER AMENDED AND STRENGTHENED IN 1976 AND RENAMED THE PROTECTION OF CIVIL RIGHTS ACT. ENFORCEMENT OF THE LAW IS THE RESPONSIBILITY OF STATE GOVERNMENTS AND THE RECORD OF REDRESS OF GRIEVANCES VARIES FROM STATE TO STATE AND OFTEN REFLECTS THE SOCIAL ATTITUDES OF LOCAL OFFICIALS".

"SINCE INDEPENDENCE, THERE HAS BEEN PROGRESS IN AMELIORATING LIMITED OFFICIAL USE

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THE EFFECTS OF DISCRIMINATION OF THE CASTE SYSTEM IN ECONOMIC AREAS AND IN SOCIAL CUSTOMS IN THE URBAN AREAS. DE FACTO DISCRIMINATION CONTINUES TO EXIST, HOWEVER. THE CONSTITUTIONALLY MANDATED COMMISSIONER FOR SCHEDULED CASTES AND SCHEDULED TRIBES IN HIS 24TH ANNUAL REPORT NOTED THAT SUCH DISCRIMINATION IS DEEPLY ROOTED IN THE FABRIC OF INDIAN SOCIETY, IS WIDESPREAD IN RURAL INDIA WHERE MOST OF THE POPULATION RESIDES, AND CONTINUES DESPITE LEGAL PROVISIONS AND STATE EFFORTS TO THE CONTRARY. THE COMMISSIONER FURTHER NOTED THAT THE NEED TO ENACT MORE STRINGENT CIVIL RIGHTS LAWS AFTER THIRTY YEARS OF INDEPENDENCE BORE "AMPLE TESTIMONY OF THE FACT THAT WE CONTINUE WITH OUR SIN OF DENYING BASIC HUMAN RIGHTS TO QUITE A SIZEABLE SECTION OF OUR PEOPLE".

5. III B. FREEDOM OF MOVEMENT: WE DO NOT THINK DISCUSSION OF INDIAN WORKERS IS RELEVANT TO BASIC RIGHTS NOR IS EVIDENCE SUFFICIENT TO INDICATE THAT BACKLOG HAD LED TO ABUSES OR THAT CORRUPTION IN THE PASSPORT OFFICE IS RAMPANT. A STANDARD COMPLAINT IN INDIA IS THE DELAY IN PASSPORT ISSUANCE BECAUSE OF RED TAPE. FURTHERMORE, GULF EMPLOYMENT IS A POLITICAL ISSUE. ON THE ONE HAND THE GOVERNMENT IS CENSURED FOR NOT MAKING SURE THAT INDIANS GOING ABROAD HAVE REAL EMPLOYMENT PROSPECTS; ON THE OTHER, IT IS CHASTIZED FOR DELAY IN PASSPORT ISSUANCE RESULTING FROM REGULATIONS TO ENSURE PROPER EMPLOYMENT. WE WOULD CHANGE SECOND SENTENCE OF THIS SECTION, THEREFORE, TO STATE SIMPLY: "THERE IS FREEDOM OF FOREIGN TRAVEL AND EMIGRATION PROVIDED CERTAIN REGULATORY REQUIREMENTS ARE MET. IN THE PAST YEAR, THE GOVERNMENT OF INDIA HAS LIBERALIZED PASSPORT REGULATIONS AND HAS OPENED MORE PASSPORT OFFICES IN ORDER TO EXPEDITE ISSUANCE AND REDUCE THE BACKLOG OF APPLICATIONS".

C. FREEDOM TO PARTICIPATE IN THE POLITICAL PROCESS. PHRASING

OF SENTENCE IMPLIES THAT UNDER EMERGENCY CITIZENS WERE NOT FREE
TO PARTICIPATE IN THE POLITICAL PROCESS BECAUSE OF RELIGION,
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RACE, ETC. THEY WERE RESTRICTED FOR POLITICAL REASONS ONLY.
WE WOULD SUGGEST INSTEAD THAT REFERENCE TO "RESTORATION OF
DEMOCRACY" BE DROPPED ALTOGETHER AND SENTENCE BEGIN: "ALL
CITIZENS OF INDIA...ETC."

6. OVERVIEW STATEMENT. AS REQUESTED IN PARA TWO, REF A, THERE
FOLLOWS A SUMMARY STATEMENT. "INDIA HAS A VIGOROUS DEMOCRATIC
POLITICAL SYSTEM, AN INDEPENDENT JUDICIARY, AND A FLOURISHING
FREE PRESS. FUNDAMENTAL HUMAN RIGHTS ARE GUARANTEED IN THE CON-
STITUTION AND DISCRIMINATION ON THE GROUNDS OF RELIGION, RACE,
CASTE, SEX AND PLACE OF BIRTH ARE PROHIBITED. THE CONSTITUTION
ALSO MANDATES THE PROMOTION OF THE EDUCATIONAL AND ECONOMIC
INTERESTS OF THE WEAKER SECTIONS OF SOCIETY, AND THESE AIMS
ARE REFLECTED IN ECONOMIC POLICIES WHICH OVERALL GIVE PRIORITY
TO THE DEVELOPMENT OF INDIA'S RURAL AREAS. THE VAST SUBCONTINENTAL
NATION IS A MULTI-RACIAL, COMMUNAL AND CASTE SOCIETY, AND ONE OF
THE AIMS OF GOVERNMENT SINCE INDEPENDENCE HAS BEEN TO PROMOTE HAR-
MONY AMONG AND THE ADVANCEMENT OF INDIA'S DIVERSE PEOPLES.
THERE HAS BEEN PROGRESS THROUGH LEGISLATION AND GOVERNMENT PROGRAMS
IN LESSENING THE NEGATIVE EFFECTS OF THE TRADITIONAL SOCIAL AND
ECONOMIC SYSTEMS BUT INSTITUTIONAL CONSTRAINTS CONTINUE TO INHIBIT
THE EXERCISE OF FULL HUMAN RIGHTS BY ALL SECTORS OF SOCIETY".
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